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TOM LYTHGOE, CHAIR

CHUCK NOTBOHM

KEN WEBER

**PROCEEDING OF THE BOARD OF COMMISSIONERS
COUNTY OF JEFFERSON, STATE OF MONTANA
November 15, 2005**

Present: Commissioners Lythgoe, Notbohm and Weber; Harold Stepper, County Planner; Matt Johnson, County Attorney; Ben Sautter, Road Supervisor; Ken Vivrette, Jeremy Vivrette, Katherine Donnelley, Joe Schmaus, Curt Milledge, Jan Anderson, *Boulder Monitor/Jefferson County Courier*

MINUTES

Commissioner Notbohm moved to approve the minutes of the September 22nd meeting with the Governor. Commissioner Weber seconded. The motion carried.

Commissioner Notbohm moved to approve the minutes of the October 11th Road/Solid Waste meeting. Commissioner Weber seconded. The motion carried.

Commissioner Notbohm moved to approve the minutes of the October 18th Road/Solid Waste meeting. Commissioner Weber seconded. The motion carried.

REPORTS

Receipt of October cash report from Treasurer.

Receipt of a copy of a letter from the Clerk and Recorder to the Basin Water and Sewer board, regarding election by a acclamation. The board will also have to fill a vacancy.

CALENDAR REVIEW

- 11/16 Impact fees class - Helena - 9:00
- 11/17 Headwaters - Butte - 1:00
- Solid Waste board - 7:00
- 11/22 Bid opening for fairgrounds multi-purpose building - 1:00
- 11/23 CTAC - Whitehall - 8:00

COMMISSION REPORTS

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NORTHWEST ENERGY

Commissioner Lythgoe reported that he met with Bob Marks on Wednesday. Bob wanted to discuss NorthWest Energy, who want to build new power lines across Jefferson County.

SOUTH HELENA INTERCHANGE

Commissioner Lythgoe reported that he attended a meeting regarding the South Helena Interchange on Thursday. He stated that Director Lynch is going to hold a meeting every 30 days, due to the tight time line and the many tasks to be completed by March. Everything is on schedule so far. They also discussed 282 between Montana City and East Helena. This is an x-route, and the Commission has received a letter from MDT stating that they don't want the road, they don't own the road, and it is our responsibility to maintain it. This was discussed with Mr. Lynch and his staff. The conclusion is that the Commissions of Jefferson and Lewis and Clark Counties need to go to the Highway Commission and petition to make this a secondary road. If this happens, then MDT will be responsible for the road. Apparently, MDT stated in 1976 that this is no longer a secondary road. Commissioner Lythgoe stated that the whole situation is pretty much a mess.

HEALTH BOARD

Commissioner Lythgoe stated that he was in interviews for the Health Nurse Supervisor all day the previous day. Seven applications were received, one withdrew and one they were unable to reach. The personnel officer will write a recommendation to the Health Board. Commissioner Notbohm asked if all of the applicants were qualified. Commissioner Lythgoe stated that they were.

LIBRARY BOARD

Commissioner Weber stated that Bob Cooper, State Library Director, came to the Library Board meeting and explained what a library district is and why he feels they are beneficial. He presented a handbook for the library board to review. Commissioner Weber stated that the Library Board thought at first that the Commission was trying to pull something behind their backs; now they feel that this option needs more discussion. The Board also selected someone to fill the Library Director position. Commissioner Notbohm stated that he thought that the Library Director position and the library district went hand-in-hand. Commissioner Weber stated that they needed a Library Director no matter what. Commissioner Lythgoe asked if Commissioner Weber has any feeling of how the Library Board feels about forming a library district. Commissioner Weber stated that they still think the Commission is trying to be mean to them.

MOSQUITO BOARD

Commissioner Notbohm reported that the Mosquito Board did a walk-through of the new building on Monday morning. He stated that Dave Ramey is finished, and did a really nice job. Commissioner Lythgoe asked how big the building is. Commissioner Notbohm stated that it is 48' by 24', and he thinks that the Weed Department will find that they should have made their portion larger. They have one stall, and is he not sure that it will be adequate for all of their equipment. The Mosquito Board has two stalls and that will be fully adequate.

CORRESPONDENCE

WIC Agreement with Broadwater County - The agreement with Broadwater County to provide WIC services in Jefferson County was presented for signature. Commissioner Weber moved to authorize Commissioner Lythgoe to sign the agreement. Commissioner Notbohm seconded. The motion carried.

DPHHS Community Operating Plan - Commissioner Weber moved to enter into the agreement with DPHHS for the operating plan. Commissioner Notbohm seconded. The motion carried.

Commissioner Weber stated that the Town of Whitehall has requested that Ben continue with the maintenance of what are possibly city streets. They are not sure who owns the streets and who is responsible for maintenance. Commissioner Weber asked if the Town is going to make a request, if it should come to the Commission. Commissioner Lythgoe stated that they have dealt with this before, and there is something in place. They need to get together with Ben. Commissioner Notbohm stated that Ben has been trying to pull together a meeting, but Whitehall has not been willing. Commissioner Weber will discuss this with Ben.

South Hills Drive RMD - Commissioner Lythgoe stated that the Commission received a letter from Dr. Kehr requesting that the administrative fee be reduced from 10% to 5%. Dr. Kehr would also like the money now, so that they can get started. Commissioner Lythgoe stated that the County will front them the money. Commissioner Notbohm moved to allow the reduction from 10% to 5% for the administrative fee for a period of two years. Commissioner Weber seconded. The motion carried.

SUBDIVISION REVIEW

FINAL PLAT APPROVAL - RIMSHOT MINOR

Harold Stepper, County Planner, presented his staff report and recommended that final plat approval be granted. Commissioner Weber moved to grant final plat approval. Commissioner Lythgoe seconded. The motion carried.

ITEMS FOR COMMISSIONERS ACTION OR REVIEW

SET DATE FOR PUBLIC MEETING REGARDING ROADLESS ISSUES

Commissioner Lythgoe stated that this meeting date was set at the previous meeting. The meeting has been set for December 13th.

DISCUSS SPEED LIMIT ORDINANCE

Commissioner Lythgoe stated that statute doesn't allow the county to set speeds below 35 mph. The state has agreed to do a modified speed study on eight or nine roads. This item will be reagendaized after the studies have been completed.

DISCUSS AND DECIDE ON PURCHASE OF AUTOMATED TRAFFIC COUNTER

Commissioner Lythgoe stated that over the past several months, the Commission and the Road Supervisor have discussed purchasing a traffic counter. The County needs an engineered speed study to set speed limits below 35 mph, and they are not sure if this piece of equipment will be

allowed, per statute. Ben has heard from the Stillwater County Attorney that they are using this piece of equipment to set speed limits there.

Matt stated that when he contacted the Stillwater County Attorney, he was referred to the road foreman. He was sent a powerpoint presentation regarding using this equipment to set speeds. Matt stated that he is comfortable with having this versus nothing. It will be a good use of the equipment, but not the sole use. This is not so much a 100% guarantee against someone protesting a ticket, but Stillwater County is comfortable with using this, as is he. Commissioner Notbohm noted that the machine has other functions also. Commissioner Lythgoe agreed, stating that it can gather traffic counts, speeds, and calculate the 85th percentile of speeds. Matt stated that the equipment could also provide information that would be useful to an engineer if they need to do a more formal study. Commissioner Weber noted that it could also help with setting maintenance levels. He stated that he saw this equipment at the MACRS conference. Commissioner Lythgoe stated that it is his understanding that there is more than one manufacturer of this type of equipment. Commissioner Weber stated that this is correct; there were two at the MACRS conference, and Ben has the information on these.

Matt stated that this may also be a great tool for the Sheriff's office, to see a printout of speeds and traffic trends. This could identify areas where a deputy may be needed to control speeds. Commissioner Weber stated that one of the features that he likes is that the machine displays your speed as you pass, which will be a visible reminder to drivers to keep their speed down. Commissioner Lythgoe asked what is the pleasure of the Commission.

Commissioner Weber moved to authorize Ben to solicit three phone bids, to find the best price and equipment to purchase with PILT funds. Commissioner Notbohm seconded. The motion carried.

RESOLUTION 33-2005 CREATE RMD ON SOUTH HILLS DRIVE

Commissioner Weber read the resolution as follows:

RESOLUTION 33-2005

RESOLUTION TO CREATE A RURAL MAINTENANCE DISTRICT FOR SOUTH HILLS DRIVE, MONTANA CITY, MONTANA

WHEREAS, Jefferson County has created procedures to implement Rural Maintenance Districts within the county for the purpose of maintaining roads per MCA §7-12-2102; and

WHEREAS, Jefferson County has a means of collecting landowner fees through

placing this fee on tax assessments; and

WHEREAS, fifteen of seventeen landowners within the boundaries of the proposed district located in Jefferson County, Montana have petitioned Jefferson County to create a Rural Maintenance District (RMD) for the purpose to provide a safer road through removal of rocks, grading, providing road mix, sanding and plowing upon South Hills Drive; and

WHEREAS, the Jefferson County Clerk and Recorder has certified that those individuals living in Jefferson County whose names appear on the petition own real property that is served by South Hills Drive; and

WHEREAS, South Hills Drive landowners and homeowners have established a fee for individual RMD landowners of \$250.00 per year for maintenance of South Hills Drive including removal of rocks, grading, signs, and plowing and sanding. The South Hills Drive Association, Inc. shall levy the set maintenance fee and amount owed by each landowner per By-Laws of the South Hills Drive Road Association; and

WHEREAS, the Jefferson County Board of Commissioners has passed a **Resolution of Intention, No. 11-2005**, to create a Rural Maintenance District (RMD) for South Hills Drive, Montana City, Montana and over thirty days has passed since the first publication of the notice of the passing of the Resolution of Intent with no protests being filed with the Clerk and Recorder's Office; and

WHEREAS, a petition was attached to the Resolution of Intention, No. 11-2005,

describing all by laws and methods of improvements; and

WHEREAS, a map was attached to the Resolution of Intention, No. 11-2005, indicating boundaries;

WHEREAS, The Jefferson County Treasurer will collect the RMD fees and upon presentation of the proper documentation of improvement costs issue a warrant for those costs from the fees which have been collected. The Treasurer is authorized to charge a 10% administration fee from these fees; and

WHEREAS, the petition was submitted as part of this Resolution of Intent, No. 11-2005, to clarify how the Rural Maintenance District shall function;

NOW THEREFORE BE IT RESOLVED, that pursuant to §7-12-2113, MCA, the Jefferson County Commission hereby passes this resolution creating a Rural Maintenance District, **District number 1002**, for South Hills Drive in Montana City, Montana in accordance with the Resolution of Intention theretofore introduced and passed by the Board.

DATED this 15th day of November, 2005.

ATTEST:

BONNIE RAMEY
CLERK AND RECORDER

TOMAS E. LYTHGOE, CHAIR

CHUCK NOTBOHM, COMMISSIONER

KEN WEBER, COMMISSIONER

Richard River stated that he is one of the two people who are in opposition to this. He stated that he received a certified letter that this was the meeting to attend if he wanted to protest; he didn't realize that he was coming to see this adopted. He lives on Tiger Gulch and pay dues of \$220/year for road maintenance. He asked if this fee will be in addition to his current dues, or will it replace them. He noted that improving the road will increase the risks, and also that the road is in two counties.

Commissioner Weber stated that they can no longer incorporate our county and Lewis and Clark county into a RMD. This doesn't deal with the Lewis and Clark portion; they will have to deal with it separately.

Commissioner Lythgoe answered one concern, if Mr. River will still be obligated for Crossfire dues; no, this will replace the current dues. Richard stated that he has heard a bunch of different stories, and nothing clear on what will be done. He noted that he doesn't use the road and doesn't see the use of it.

Commissioner Notbohm asked if the Lewis and Clark side has done some improvement. Commissioner Lythgoe stated that they have; they graded the road, but didn't put down any material. He stated that Lewis and Clark went out shortly after Jefferson County did, and got 100% disapproval of the RMD.

Richard stated that they have always called this road a goat trail. This will be turning a goat trail into a luge run.

Commissioner Notbohm stated that his concern is, if they don't get people working together, what will be done with the bottom portion. Commissioner Lythgoe stated that seeing Lewis and Clark got 100% protest, he would ask that Lewis and Clark give them an encroachment permit and they will improve it. He noted that he has lived up there for 13 years, and his wife uses the road every day and he uses it quite often. He noted that there are some days when you get to the top of the hill and say - not today. However, there are some people who are willing to pay to fix the road.

Richard asked when it will be his chance to vote on this. Commissioner Weber stated per this meeting, and the petition needed a certain percentage to go forward. Richard asked how the petition was written up, and what Crossfire will do with the loss of fees. Commissioner Lythgoe stated that he has no idea what the association is going to do. Richard stated that a better road will have more traffic and some hellacious wrecks, and their little association will be liable. Matt stated that when someone wrecks, they look for who to sue. He has an opinion from MACo that the County is not liable. This is a privately owned road that is open to the public, but there is always potential for liability.

Commissioner Notbohm asked what the grade of the road is. Commissioner Lythgoe stated that it is probably 10 to 11 percent on the steep portion; the problem is the roughness and narrowness

of the road. One thing the association wants to do is get the road to a condition that it can be plowed and sanded. The Crossfire association hasn't done anything to the road in five or six years, and it has gotten worse and worse.

Commissioner Notbohm stated that by approving the RMD, the County is taking on responsibility, even if it is a somewhat private road. Matt countered that the County is not taking on responsibility; a group of citizens is working together to improve the road. The County is just handling the funds. If he was the RMD's attorney, he would suggest a sign that drivers use the road at their own risk, and that it is a privately maintained road.

Commissioner Notbohm stated that the road was originally meant only as an access to power lines. Commissioner Lythgoe stated that this applies to most of the roads in the area. Commissioner Weber asked if the Crossfire association has abandoned maintenance of this road. Richard stated that they haven't done anything to the road in years. They fear that if any improvements are made, it will generate more traffic. Commissioner Lythgoe asked how many protests were received. Harold stated that the only protest was a phone call from Mr. River.

Commissioner Weber stated that, due to the overwhelming support of the people in the area, he would move to approve Resolution 33-2005. Commissioner Lythgoe seconded. Discussion followed. Commissioner Notbohm stated that on this particular piece of road, he has a few concerns. By passing this, it will put it on people's tax bill indefinitely. He would rather see a time frame to review the RMD. Commissioner Lythgoe stated that he is amenable to this, and asked Commissioner Weber if he would be willing to amend his motion that the RMD be in place for two years. Commissioner Weber amended his motion. The motion carried.

IMPROVEMENTS TO HOLMES GULCH ROAD - JOE SCHMAUS

Joe started by apologizing for missing the last two meeting that he was on the agenda. He stated that he is trying to bring the road up to county standards, or close. He has filled out and submitted an encroachment permit. Commissioner Lythgoe stated that the permit indicates a road width of 14 to 18 feet. He asked if this is just for Holmes Gulch at the top over to Tucker Gulch, or Holmes Gulch down to South Hills Road. Joe stated, at this point, he plans to go west toward Tucker Gulch. Also, at his last meeting with the Commissioners, he stated that the power line easement hasn't been defined, and he would like to bring power and phone to his place.

Commissioner Weber asked if he plans to bring the road to county standards. Joe stated if that is the only thing that is acceptable. If he is going to do the whole road, he would like to do it in sections, rather than all at once. Commissioner Lythgoe asked if he was going to focus on the upper portion now. Joe stated that he was, and maybe the rest in a year or two.

Commissioner Lythgoe asked Joe if he has dealt with the Tucker Gulch side, the Lewis and Clark County piece of road. He understands that Holmes Gulch is Holmes Gulch, but Tucker Gulch is significantly in Lewis and Clark County. Joe stated that he has been talking to them over the past year. There have also been three new houses, some improvements to the road - gravel, etc. He stated that he spoke with Eric Griffith, who was not aware that anything had been done to the road. He hasn't heard back from him since.

Katherine Donnelley stated that she lives in the cabin where the road goes between her cabin and the barn. She knows that there is a road there, but it just dumps into the easement. She would like the road relocated somewhere other than between her cabin and barn. As for the gravel, she and two of the new homeowners put some in on the private easement. She stated that she is certainly willing to work with Joe, but she feels that the project needs to be planned out between Jefferson and Lewis and Clark Counties. Commissioner Notbohm asked if there is access other than between Katherine's buildings. Joe stated that they have been working together, and Katherine is willing to give up an easement behind the barn rather than have the road go between her buildings.

Commissioner Notbohm stated that he has another concern. He thinks that there are eight mining claims in the area. Joe stated that this is correct; they are owned by himself, his father and one other person. Commissioner Notbohm stated that it is his understanding that it is allowed to have one house per claim, and he wonders if the size of road proposed will be adequate for potential development. Joe stated that it is currently zoned against further development, although he is trying to get this changed. If he were able to develop in the future, he understands that the road will need to be further upgraded.

Commissioner Lythgoe asked if the road is relocated, will it go onto Bompert property to facilitate Katherine. Joe stated that it hasn't been surveyed, but he thinks that there is room, although it might be better to cut across Bompert property. He thinks that Pam Bompert would be okay with this, as they have discussed it. Commissioner Lythgoe stated that he thinks the court has established where the road is. Joe stated that they pretty much stated that it is where the road is now.

Commissioner Lythgoe asked if there is any chance to have Holmes Gulch brought close to county standards. He stated that he would have a problem approving anything less than county standards, and if it is going to connect with Tucker Gulch, it can't angle off too much. He thought that Jefferson County could work cooperatively with Lewis and Clark County on these things, but they can't. There could, however, be some discussion.

Ben stated that he has talked to Lewis and Clark about this, and they are anxious that Jefferson County doesn't do a lot of improvements before they get some issues worked out. Before this goes too far, we need to have some discussion with Lewis and Clark County. The County Attorney and he agree that the road is where it is and that it has a 60-foot easement, which is somewhat inconvenient to Ms. Donnelley. Commissioner Notbohm asked Ben if he has any problem with moving the road behind the barn. Ben stated that he doesn't, it is a good solution for Katherine. However, if the road is going to tie up with Lewis and Clark County, some things need to be cleared up first, so that it is done right. Commissioner Lythgoe agreed that where the road exists is pretty well established by law, but asked if between the Bompert property and Katherine's, if there is enough room to move the road totally within her property. Commissioner Notbohm stated that the road would be straighter if it cut across Bompert's.

Commissioner Weber stated that Joe has mentioned two things. For the utilities, he needs to approach the utility companies and they will get the permits. Joe stated that he was told that he needs to provide documentation that an easement is in place. This doesn't exist, and the court

order is not enough for them; he needs something from the Commission. Commissioner Weber stated that he has a problem with agreeing to something less than county standards, unless it is impossible to get there. That is not the case here. He would like Joe to work with Lewis and Clark County to get some issues cleared up. Joe stated that if the Commission could assist him and talk to Eric Griffith to try to get this wrapped up. Commissioner Lythgoe stated that this would be complicated, in that it is almost a suggestion that Jefferson County gives their approval, contingent on several things. Commissioner Weber asked if the Commission could facilitate a meeting with Eric. Commissioner Lythgoe stated that this was his next suggestion, to have a meeting with Ben, Eric and others involved.

Katherine stated her understanding after the meeting last spring, was that it was pretty much decided that each would call a few people and survey in the road. She is not sure who would pay for this however, as no one that lives there wants any more traffic and no one wants the road where the historic road bed is - through a house, a drain field, etc. Commissioner Weber asked how much is involved in the court decision. Joe stated that most of the road in both counties; Dennis Lay re-surveyed for the court. Katherine stated that Lewis and Clark county won't approve the road where the road is now. Commissioner Notbohm stated, that from what everyone is saying, he is amazed that no one has petitioned to close the road. Katherine stated that no one knew that there was a road at that time.

Commissioner Lythgoe stated that one reason Lewis and Clark has not done anything is that there are people that don't want anything done to the road. Katherine agreed that everyone on Tucker Gulch hates the idea of a through road there, for obvious reasons. Commissioner Lythgoe stated, but now that the road is there, crummy as it is, does anyone want it moved. Katherine stated that everyone hates the idea, but if it is inevitable, they want to make it a better road. Commissioner Lythgoe stated that this is a big reason that Lewis and Clark County is not doing anything. He stated that he feels it is appropriate that Jefferson County try to take the lead to move this forward and try to get a meeting organized. Joe stated that he feels that it would be best if the property owners work together to come up with a solution. Commissioner Lythgoe stated that the Commission will work to get a meeting set up. Joe requested that something be done regarding the utilities. Ben offered to touch base with Eric before the Commission contacts Lewis and Clark County.

PUBLIC HEARING - BUDGET AMENDMENT - GRANT SPENDING AUTHORITY

Commissioner Lythgoe called the public hearing to order and called for comment. Hearing none, he closed the public hearing.

RESOLUTION 34-2005 BUDGET AMENDMENT

Commissioner Lythgoe read the resolution as follows:

RESOLUTION 34-2005

BUDGET AMENDMENT TO GRANT SPENDING AUTHORITY FOR UNANTICIPATED FUNDS IN PLANNING AND SEARCH & RESCUE

WHEREAS, the Planning Department has received monies from the reimbursement for breakage of fixed assets, specifically a desk, in excess of the amount anticipated for fiscal year 2005-2006; and

WHEREAS, Search and Rescue has received monies from a reimbursement, in excess of the amount anticipated for fiscal year 2005-2006;

NOW, THEREFORE, BE IT RESOLVED by the Jefferson County Board of Commissioners that the anticipated revenues of Jefferson County for fiscal year 2005-2006 be correspondingly increased in fund 1000 revenue source 360000 and in expenditure account 1000-411200 object 216 \$250.00, and increased in fund 2902 revenue source 360000 and in expenditure account 2902-420470 object 216 \$465.00.

BE IT FURTHER RESOLVED that Two Hundred Fifty dollars received from a reimbursement for breakage of fixed assets be appropriated to the Jefferson County Fund 1000, expenditure account 411200, object 216 and that Four Hundred Sixty-Five dollars received from reimbursement for search and rescue be appropriated to the Jefferson County Fund 2902, expenditure account 420470, object 216.

DATED this 15th of November, 2005.

ATTEST:

BONNIE RAMEY
CLERK AND RECORDER

TOMAS E. LYTHGOE, CHAIR

CHUCK NOTBOHM, COMMISSIONER

KEN WEBER, COMMISSIONER

Commissioner Weber moved to adopt the resolution. Commissioner Notbohm seconded. The motion carried.

OPPORTUNITY FOR PUBLIC COMMENT

Jan Anderson stated that she has been invited by the Helena Rotary to speak regarding "*Living in*

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the Shadow of Helena". She has been told to be brutally honest, and any input from the Commission would be appreciated.

MEETING ADJOURNED

ATTEST:

**BONNIE RAMEY
CLERK AND RECORDER**

TOMAS E. LYTHGOE, CHAIR

CHUCK NOTBOHM, COMMISSIONER

KEN WEBER, COMMISSIONER